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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Unit: 3732

Docket No.: ZIM0048-02

Applicant: Dana Mears et al.

Invention: METHOD AND APPARATUS FOR
PERFORMING A MINIMALLY INVASIVE
TOTAL HIP ARTHROPLASTY

Serial No: 10/053,931

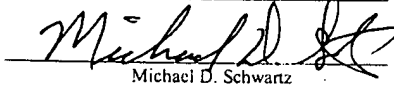
Filed: January 22, 2002

Examiner: M. Priddy

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being
deposited with the United States Postal Service as
first class mail in an envelope addressed to: Mail
Stop 16, Commissioner for Patents, P.O. Box 1450,
Alexandria, VA 22313-1450.

on March 10, 2004


Michael D. Schwartz

REFUND REQUEST UNDER 37 CFR § 1.26

Mail Stop 16
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:


On November 4, 2003, our Deposit Account was charged \$420.00 for a two-month extension of time.

The extension of time was charged to our deposit account for filing a late response to an Office Action mailed July 25, 2003.

However, the Office Action set a period of response time for three (3) months from the mailing date of the Office Action (see copy of office action enclosed). A proper response to the office action was made on October 22, 2003, well within the three-month time period. No extensions of time were necessary.

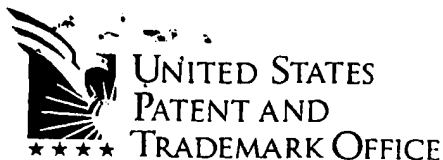
Therefore, a refund in the amount of \$420.00 is requested in the above identified application pursuant to 37 CFR §§ 1.26. Please credit the refund to Deposit Account No. 02-0385, BAKER & DANIELS.

Respectfully submitted,


Michael D. Schwartz, Reg. No. 44,326
Attorney for Applicant

Adjustment date: 03/23/2004 SDIRETA1
11/04/2003 SERVICE 00000001 020385 10053931
01 FC:1232 420.00 CR

BAKER & DANIELS
Suite 800, 111 East Wayne Street
Fort Wayne, IN 46802
Telephone: 260-424-8000
Facsimile: 260-460-1700



MONTHLY STATEMENT OF DEPOSIT ACCOUNT

To replenish your deposit account, detach and return top portion with your check. Make check payable to Director of Patents & Trademarks.

JAN 10 2004

BAKER & DANIELS

FINA

BAKER & DANIELS
IP TEAM
111 E. WAYNE STREET
SUITE 800
FORT WAYNE IN 46802

Under Secretary of Commerce for Intellectual Property and
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Date	11-28-03
Page	1

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DATE POSTED			CONTROL NO.	DESCRIPTION (Serial, Patent, TM, Order)	DOCKET NO.	FEE CODE	CHARGES/ CREDITS	BALANCE
MO.	DAY	YR.						
11	3	03	1	10235214	C-523/TEC125	1201	86.00	11450.04
11	3	03	3	10235214		9204	-84.00	11534.04
11	3	03	92		H589	8507	180.00	11354.04
11	4	03	1	10053931	ZIM0048-02	1252	420.00	10934.04
11	4	03	2	21230010	2T102490	6901	100.00	10834.04
11	5	03	214	10306509	H591	8007	40.00	10794.04
11	5	03	301	78245342		8507	210.00	10584.04
11	6	03	10	E-REPLENISHMENT		9203	-100.00	10684.04
11	10	03	6	PAYMENT		9204	-300.00	10984.04
11	10	03	7	PAYMENT		9204	-300.00	11284.04
11	10	03	377	10432965		9204	-160.00	11444.04
11	12	03	2213	78326777	IR00149	7001	335.00	11109.04
11	13	03	262	10447712	H592	8007	20.00	11089.04
11	18	03	1	10287105	220295TEL066	1202	36.00	11053.04
11	19	03	152	78294123	KIM0592	6002	100.00	10953.04
11	26	03	6	5782804		8008	200.00	10753.04
11	26	03	7	5782804		8010	25.00	10728.04
11	28	03	91	2113035		6205	100.00	10628.04
11	28	03	92	2113035		6208	200.00	10428.04

AN AMOUNT SUFFICIENT TO
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OPENING BALANCE

11536.04

TOTAL CHARGES

2052.00

TOTAL CREDITS

944.00

CLOSING BALANCE

10428.04



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,931	01/22/2002	Dana Mears	ZIM0048-02	7230

832 7590 07/25/2003
BAKER & DANIELS
111 E. WAYNE STREET
SUITE 800
FORT WAYNE, IN 46802



EXAMINER

PRIDDY, MICHAEL B

ART UNIT PAPER NUMBER

3732

DATE MAILED: 07/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

REPLY DUE: *Response / Election*
10-25-03
DOCKET 1 ☒ DOCKET 2 ☒

Office Action Summary

Application No.

10/053,931

Applicant(s)

MEARS ET AL.

Examiner

Michael B Priddy

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) 1-14 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7, drawn to a method of preparing an acetabulum to receive an acetabular cup, classified in class 623, subclass 22.21.
- II. Claims 8-14, drawn to a method of preparing a femur to receive a femoral stem, classified in class 623, subclass 22.40.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as with a method for preparing a femur which is different from that of invention II or by itself. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to Mr. Michael D. Schwartz on 07/21/2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Art Unit: 3732

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Michael B. Priddy

July 21, 2003